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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARIA G. CASTELLANOS
and MEHMET SAYAL

Appeal 2009-015262
Application 10/672,356
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, *Administrative Patent Judges.*

MOHANTY, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-5 and 20-34 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is directed to a method and system for determining whether a composite service level agreement (SLA) may be met (Spec. [0005]). Claim 1, reproduced below with the numbering in brackets added, is representative of the subject matter of appeal.

> 1. A method of determining whether a composite service level agreement (SLA) may be met comprising:
>
> [1] calculating a baseline metric value for each of a plurality of component SLAs in a computing system that operate to form a composite SLA;
>
> [2] comparing a historical metric value for each of the plurality of component SLAs to their respective baseline metric value to determine if each historical metric is sufficient to ensure that the composite SLA is met.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Brichta	US 5,864,483	Jan. 26, 1999

Underwood	US 6,523,027 B1	Feb. 18, 2003
McGee	US 2003/0079160 A1	Apr. 24, 2003
Shay	US 2004/0153563 A1	Aug. 5, 2004

The following rejections are before us for review:

1. Claim 30 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

2. Claims 1-5 and 20-24 are rejected as being unpatentable under 35 U.S.C. § 103(a) over Brichta and Underwood.

3. Claims 25-29 are rejected as being unpatentable under 35 U.S.C. § 103(a) over Brichta, Underwood, and McGee.

4. Claims 30-34 are rejected as being unpatentable under 35 U.S.C. § 103(a) over McGee and Shay.

THE ISSUES

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

With regards to the rejection of claim 30 under 35 U.S.C. § 112, second paragraph, this issue turns on whether those skilled in the art would understand what is being claimed when the claim is read in light of the specification.

With regards to the rejection of claim 1 and its dependent claims, this issue turns on whether the prior art discloses claim limitation [1] as identified above. The rejection of claim 30 and its dependent claims turns on a similar issue.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:[2]

FF1. The Specification at [0024] [Step 3] states that for each component service, the required success rate may be compared with its historical success rate. If for any component service the historical success rate is less than the required success rate, then a conflict is indicated and the composite SLA may not be promised. The term "baseline metric value" should be read to comprise either use of a required success rate or a corresponding failure rate.

FF2. Brichta discloses a system for monitoring of service delivery or product manufacturing (Col. 1:1-2).

FF3. Brichta discloses that Figure 3B illustrates that a service level standard (SLS) line 56 defines the standard level of service afforded to customers for the particular characteristic of the control graph. A service level agreement A (SLA A) line 58 defines the level of service provided for the characteristic pursuant to a hypothetical service level agreement A. A service level agreement B (SLA B) line 60 defines a level of service provided pursuant to a hypothetical service level agreement B (Col. 11:32-41).

FF4. Brichta discloses that each of SLS line 56, SLA A line 58, and SLA B line 60 may correspond to a control value (defined by a criterion) for the characteristic of control graph 54, as specified in the service level standard, the service level agreement A, and the service level agreement B,

[2] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

respectively. Service level lines 56, 58, and 60 are overlaid on the distribution of occurrences so that a user can readily determine whether the service provider is meeting the criteria for the characteristic (Col.11:46-54).

FF5. Brichta at Co1.6:12-19, Col.11:32-41, and Col.11:46-54 does not disclose calculating a baseline metric value for each of a plurality of component SLA's in a computing system that operate to form a composite SLA.

FF6. Shay discloses systems and methods for processing metrics representing current conditions in a network, in order to predict future values of those metrics (Abstract).

FF7. Shay discloses that the response time metric may be described as a service level metric whereas bandwidth, latency, utilization and processing delays may be classified as component metrics of the service level metric. Service level metrics have certain entity relationships with their component metrics that may be exploited to provide a predictive capability for service levels and performance. Based on predicted service level information, actions may be taken to avoid violation of a service level agreement including, but not limited to, deployment of network engineers, re-provisioning equipment, identifying rogue elements, etc. [0005].

FF8. Shay at [0005] does not disclose calculating a baseline metric value for each of a plurality of component SLA's in a computing system that operate to form a composite SLA.

ANALYSIS

Rejections under 35 U.S.C. § 112, second paragraph

The Appellants argue that the rejection of claim 30 is improper because the term "sufficient" in the context of the claims and Specification would be understood by a person of ordinary skill in the art (Br. 4-5).

In contrast, the Examiner has determined that the rejection of claim 30 under 35 U.S.C. § 112, second paragraph, is proper (Ans. 3).

We agree with the Appellants. The test for definiteness under 35 U.S.C. § 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.,* 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted). The Specification states that a required success rate is an example of a baseline metric value, that the required success rate may be compared with its historical success rate, and that if for any component service, the historical success rate is less than the required success rate, then a conflict is indicated and the composite SLA may not be promised (FF1). Those skilled in the art would understand what is being claimed when the phrase "sufficient" in claim 30 is read in light of the Specification as describing whether or not the historical metric value is enough to ensure that the composite SLA has been met. Thus, those of ordinary skill in the art would understand what is being claimed in the cited phrase. For these reasons, the rejection of claim 30 under 35 U.S.C. § 112, second paragraph, as being indefinite is not sustained.

Rejections under 35 U.S.C. § 103(a)

Claims 1-5 and 20-29

The Appellants argue that the rejection of claim 1 is improper because Brichta fails to disclose claim limitation [1] as identified above (Br. 6).

In contrast, the Examiner has determined that Brichta discloses the cited claim limitation at Co1.6:12-19, Col.11:32-41, and Col.11:46-53 (Ans. 8).

We agree with the Appellants. Claim 1 includes limitation [1] which requires:

> [1] calculating a baseline metric value for each of a plurality of component SLAs in a computing system that operate to *form a composite SLA*. (Claim 1, emphasis added).

Thus, the claim requires in part a plurality of component SLAs in a computing system that operate to *form a composite SLA*. At the portions of the reference cited by the Examiner, Brichta fails to disclose a plurality of component SLA's in a computing system that operate to *form a composite SLA* (FF5). Brichta at Col.11:32-41 and Col.11:46-54 does disclose a plurality of SLA's (SLS, SLA A, SLA B), each having a baseline metric value (control value) (FF3, FF4), but it is not apparent, and the Examiner has not explained, how this disclosure in Brichta discloses the claim element of a plurality of component SLA's in a computing system that operate to *form a composite* SLA (FF5). In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *Id.* at 1445. *See also Piasecki*, 745 F.2d at 1472. For

these reasons, the rejection of claim 1 and its dependent claims is not sustained.

Claims 30-34

The Appellants argue that the rejection of claim 30 is improper because Shay fails to disclose a similar limitation as identified above in claim 1 (Br. 13-14).

In contrast, the Examiner has determined that Shay discloses the claim limitation at paragraph [0005] (Ans. 7).

We agree with the Appellants. Claim 30 includes a limitation which requires:

> calculating a baseline metric value for each of a plurality of component SLAs in a computing system that operate to *form a composite SLA*. (Claim 30, emphasis added).

Thus, the claim requires in part a plurality of component SLA's in a computing system that operate to *form a composite SLA*. The portions of Shay which have been cited by the Examiner disclose a service level metric (response time metric) and component metrics (bandwidth, latency, utilization and processing delays) of the service level metric and methods for processing metrics to predict future values of those metrics for service levels and performance, wherein actions may be taken to avoid violation of a service level agreement based on those predicted future values (FF6, FF7), but Shay, at the sections cited by the Examiner, does not disclose a plurality of component SLA's in a computing system that operate to *form a composite SLA* (FF8) as claimed. Further, the Examiner has acknowledged that McGee fails to disclose this claim limitation (Ans. 7). For these reasons, the rejection of claim 30 and its dependent claims is not sustained.

CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claim 30 under 35 U.S.C. § 112, second paragraph.

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-5 and 20-24 as being unpatentable under 35 U.S.C. § 103(a) over Brichta and Underwood.

We conclude that Appellants have shown that the Examiner erred in rejecting claims 25-29 as being unpatentable under 35 U.S.C. § 103(a) over Brichta, Underwood, and McGee.

We conclude that Appellants have shown that the Examiner erred in rejecting claims 30-34 as being unpatentable under 35 U.S.C. § 103(a) over McGee and Shay.

DECISION

The Examiner's rejection of claims 1-5 and 20-34 is reversed.

REVERSED

mls

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